

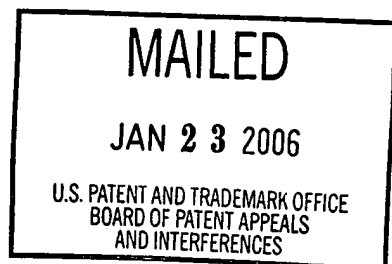
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

## UNITED STATES PATENT AND TRADEMARK OFFICE

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### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Ex parte GLEN R. CHARTIER et al.

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Appeal No. 2006-0033  
Application No. 10/764,302

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ON BRIEF

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Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

### DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed December 3, 2004) of claims 1, 4 and 7, which are all of the claims pending in this application.

We REVERSE.

### BACKGROUND

The appellants' invention relates to the art of pipe wrenches and more particularly, to improvements in pivoting jaw pipe wrenches (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

Claims 1, 4 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 460,230<sup>1</sup> to Gunnarson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (mailed July 7, 2005) for the examiner's complete reasoning in support of the rejection, and to the brief (filed April 21, 2005) and reply brief (filed August 31, 2005) for the appellants' arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art patent to Gunnarson,

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<sup>1</sup> Issued September 29, 1891.

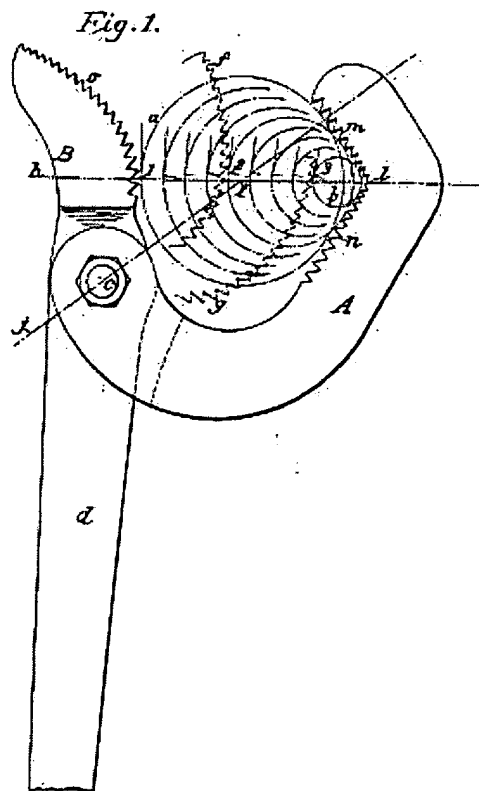
to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Claim 1, the only independent claim on appeal, reads as follows:

A wrench for gripping any one of a plurality of cylindrical workpieces in a progressive sequence of different diameters comprising, a handle having longitudinally opposite ends, a fixed jaw on one of said ends, said fixed jaw comprising a plurality of teeth laterally therealong and facing longitudinally outwardly of said one end, said teeth including a plurality of discrete teeth, each discrete tooth being for providing just single tooth contact with a different one of each of the plurality of cylindrical workpieces in a progressive sequence of different diameters, a pivotal jaw member having first and second jaw faces at an angle to one another and each including a plurality of teeth facing inwardly of said one end, said pivotal jaw member being mounted on said one end for displacement of said first and second jaw surfaces about a jaw axis toward and away from said fixed jaw, each workpiece of given diameter in said progressive sequence to be gripped by the wrench being cradled between said first and second jaw faces and engaged by just the one of said plurality of discrete teeth provided on said fixed jaw for the workpiece of given diameter.

Gunnarson's invention relates to improvements in pipe-wrenches; and the objects of his improvement are (1) to provide a self-adjusting wrench the can be shifted instantly from one size of pipe to another, and (2) to provide a wrench that will grasp the pipe on three different sides with series of teeth graduated in size to the size of pipe they are bound to work upon. Figure 1, shown below, is a side view of the wrench, handle excluded.



Gunnarson's wrench includes a C-shaped jaw A and a self-adjusting jaw B. The C-shaped jaw A is provided with two series of teeth m and n at an angle to each other which is determined by the leverage c1 of the jaw B and is calculated to grip the pipe on two sides equally distant and opposite the grip of jaw B. The teeth m and n are decreased in size toward the corner l in proportion with the pipes they work upon. The C-shaped jaw A extends to pivot c in a curved shape, in order to give room for jaw B when brought up close together. The self-adjusting jaw B, which is extended as a lever d forming the handle of the wrench, is provided with a tooth curve o, gradually rising from the pivot c in such a shape that when it is brought against any size pipe that can be held by the C-shaped jaw A it will grasp any pipe at the same angle of leverage ci1 from a line drawn through the pivot c to the center of each pipe. The teeth of the tooth curve o decrease in size toward the end of the self-adjusting jaw B proportionally with the pipes they act upon.

Figure 1 of Gunnarson depicts three positions of the wrench. The first position depicted is the solid line position with pipe a grasped between the jaws A and B. The second position depicted is the dotted line g position with pipe b grasped between the jaws A and B. The third position depicted is the dotted line f position with a pipe grasped between the jaws A and B.

A determination that a claim is anticipated under 35 U.S.C. § 102(b) involves two analytical steps. First, the claim language must be interpreted where necessary by giving the claims their broadest reasonable interpretation. Secondly, the construed claim must be compared to the applied prior art reference so as to ensure that each and every limitation is found either expressly or inherently in the applied prior art reference. See In re Crish, 393 F.3d 1253, 1256, 73 USPQ2d 1364, 1366 (Fed. Cir. 2004).

We understand claim 1 as requiring that the fixed jaw provides only a single tooth contact with a different one of each of a plurality of cylindrical workpieces in a progressive sequence of different diameters so that when each workpiece of given diameter in the progressive sequence is gripped by the wrench the workpiece is cradled between the fixed jaw and the pivoting jaw and is engaged by just a single tooth provided on the fixed jaw. It is the examiner's contention that Figure 1 of Gunnarson discloses the appellants' claimed single tooth contact and, in support thereof, the examiner relies on an enlargement of Figure 1 of Gunnarson (answer, p. 3). In this enlargement of Figure 1, the examiner marks three discrete teeth of Gunnarson at locations 1, 2 and 3 that the examiner maintains provide the claimed single tooth contact. The appellants contend, referring to the enlargement of Figure 1 which is of

record as "EXHIBIT 1" submitted by the appellants on January 26, 2004, that, at locations 2 and 3 in Figure 1 of Gunnarson two teeth contact the workpiece.

Figure 1 of Gunnarson provides only a simplified schematic representation of the teeth engaging the workpieces at locations 1, 2 and 3. Both the examiner and the appellants have engaged in what appears to us to be a somewhat futile attempt to determine if Figure 1 of Gunnarson shows the claimed single tooth contact. Figure 1 of Gunnarson is not a working drawing<sup>2</sup> and it is clear to us that Gunnarson never intended Figure 1 to disclose to one skilled in the art the now claimed single tooth contact.<sup>3</sup> Since it is well settled that the burden of establishing a prima facie case of anticipation resides with the United States Patent and Trademark Office (USPTO),<sup>4</sup> it is our opinion that the examiner has failed to establish a prima facie case of anticipation since Gunnarson does not disclose the claimed single tooth contact.

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<sup>2</sup> See In re Chitayat, 408 F.2d 475, 478, 161 USPQ 224, 226 (CCPA 1969); In re Wilson, 312 F.2d 449, 454, 136 USPQ 188, 192 (CCPA 1963).

<sup>3</sup> It is well established that an anticipation rejection cannot be predicated on an ambiguous reference. Rather, statements and drawings in a reference relied on to prove anticipation must be so clear and explicit that those skilled in the art will have no difficulty in ascertaining their meaning. See In re Turley, 304 F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962).

<sup>4</sup> See In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).


For the reasons set forth above, the decision of the examiner to reject claims 1, 4 and 7 under 35 U.S.C. § 102(b) is reversed.


CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 4 and 7 under 35 U.S.C. § 102(b) is reversed.

REVERSED

  
CHARLES E. FRANKFORT  
Administrative Patent Judge

  
JOHN P. McQUADE  
Administrative Patent Judge

  
JEFFREY V. NASE  
Administrative Patent Judge

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